

TITLE 8 DEVELOPMENT CODE
DIVISION 10: SOIL AND WATER CONSERVATION
CHAPTER 1: SURFACE MINING AND LAND RECLAMATION.

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810.0101 Purpose and Intent.

(a) The County recognizes that the extraction of minerals is essential to the continued economic well-being of the County, its residents and to the needs of society and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety. The County also recognizes that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications therefore may vary accordingly.

(b) The purpose and intent of this Chapter is to ensure the continued availability of important mineral resources, while regulating surface mining operations as required by California's Surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710 et seq.), as amended, hereinafter referred to as "SMARA", Public Resources Code (PRC) Section 2207 (relating to annual reporting requirements), and State Mining and Geology Board regulations (hereinafter referred to as "State regulations") for surface mining and reclamation practice (California Code of Regulations [CCR], Title 14, Division 2, Chapter 8, Subchapter 1, Sections 3500 et seq.), to ensure that:

(1) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses; and

(2) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment; and

(3) Residual hazards to the public health and safety are eliminated.

(c) In the event that the State amends SMARA to the extent that it adds to or conflicts with this Chapter, State law shall prevail.

Readopted Ordinance 3341 (1989); Amended Ordinance 3759 (1999)

810.0105 Incorporation by Reference.

The provisions of SMARA (PRC §2710 et seq.), PRC Section 2207, and State regulations CCR §3500 et seq., as those provisions and regulations may be amended from time to time, are made a part of this Chapter by reference with the same force and effect as if the provisions therein were specifically and fully set out herein, excepting that when the provisions of this Chapter are more restrictive than correlative State provisions, this Chapter shall prevail.

Readopted Ordinance 3341 (1989); Amended Ordinance 3759 (1999)

810.0110 Scope.

(a) Except as provided in this Chapter, no person shall conduct surface mining operations unless a permit and/or Reclamation Plan, and financial assurances for reclamation have first been approved by the County. Any applicable exemption from this requirement does not automatically exempt a project or activity from the application of other regulations, ordinances or policies of the County, including but not limited to, the application of CEQA, the requirement of Conditional Use Permits or other permits, the payment of development impact fees, or the imposition of other dedications and exactions as may be permitted under the law. The provisions of this Chapter shall apply to all lands within the County, public and private.

(b) This Chapter shall not apply to the following activities, subject to the above referenced exceptions:

(1) Excavations or grading conducted for farming or for the purpose of restoring land following a flood or natural disaster.

(2) Onsite excavation and onsite earthmoving activities which are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

(A) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, the California Environmental Quality Act ("CEQA", Public Resources Code, Division 13, §21000 et seq.).

(B) The County's approval of the construction project is consistent with general plan and included consideration of the onsite excavation and onsite earthmoving activities pursuant to CEQA.

(C) Surplus materials shall not be exported from the site unless and until the site accepting the surplus materials likewise has been approved for development according to the appropriate procedures of the agency having land use jurisdiction.

(D) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.

(3) Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following conditions:

(A) The plant site is located on lands with an appropriate Official Land Use Designation commensurate with the activity, according to the County's general plan.

(B) None of the minerals being processed are being extracted onsite.

(C) All reclamation work has been completed pursuant to the approved Reclamation Plan for any mineral extraction activities that occurred onsite after January 1, 1976.

(4) Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less.

(5) Limited surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose. (Otherwise known as "assessment work.")

(6) Any other surface mining operations that the State Mining and Geology Board determines to be of an infrequent nature and which involve only minor surface disturbances.

(7) Emergency excavations or grading conducted by the Department of Water Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.

(8) Road construction and maintenance for timber or forest operations if the land is owned by the same person or entity, and if the excavation is conducted adjacent to timber or forest operation roads. This exemption is only available if slope stability and erosion are controlled in accordance with Board regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and postclosure uses in consultation with the Department of Forestry and Fire Protection. This exemption does not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavations for materials that are, or have been, sold for commercial purposes.

Readopted Ordinance 3341 (1989); Amended Ordinance 3759 (1999)

810.0115 Vested Rights.

(a) No person who obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit to mine, so long as the vested right continues and as long as no substantial changes have been made in the operation except in accordance with SMARA, State regulations, and this Chapter. Where a person with vested rights has continued surface mining in the same area subsequent to January 1, 1976, he shall obtain County approval of a Reclamation Plan covering the mined lands disturbed by such subsequent surface mining. In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre- and post-Act mining, the Reclamation Plan shall call for reclamation proportional to that disturbance caused by the mining after the effective date of the Act (January 1, 1976).

(b) All other requirements of State law and this Chapter shall apply to vested mining operations.

Readopted Ordinance 3341 (1989); Amended Ordinance 3759 (1999)

810.0120 Process.

(a) Applications for a Conditional Use Permit or Reclamation Plan for surface mining or land reclamation projects shall be made on forms provided by the Planning Division of the Land Use Services Department. Said application shall be filed in accord with this Chapter and procedures to be established by the Director of Land Use Services. The forms for Reclamation Plan applications shall require, at a minimum, each of the elements required by SMARA (PRC §§2772-2773) and other State regulations, and any other requirements deemed necessary to facilitate an expeditious and fair evaluation of the proposed Reclamation Plan, to be established at the discretion of the Director of Land Use Services. As many copies of the Conditional Use Permit application as may be required by the Director of Land Use Services shall be submitted to the Planning Division of the Land Use Services Department. For the purpose of documenting a transfer of ownership of a Mining Conditional Use Permit or Reclamation Plan, a Transfer of Ownership application shall be filed and a new Notification of Responsibility form accomplished.

(b) As many copies of a Reclamation Plan application as may be required shall be submitted in conjunction with all applications for Conditional Use Permits for surface mining operations. For surface mining operations that are exempt from a Conditional Use Permit pursuant to this Chapter, the Reclamation Plan application shall include information concerning the mining operation that is required for processing the Reclamation Plan. All documentation for the Reclamation Plan shall be submitted to the County at one time.

(c) Applications shall include all required environmental review forms and information prescribed by the Director of Land Use Services.

(d) Upon completion of the environmental review procedure and filing of all documents required by the Director of Land Use Services, consideration of the Conditional Use Permit or Reclamation Plan for the proposed or existing surface mine shall be completed pursuant to Section 83.030140 of this Title at a public hearing before the Planning Commission, and pursuant to Section 2774 of the Public Resources Code.

(e) Within thirty (30) days of acceptance of an application for a Conditional Use Permit for surface mining operations and/or a Reclamation Plan as complete, the Planning Division of the Land Use Services Department shall notify the State Department of Conservation of the filing of the application(s). Whenever mining operations are proposed in the 100-year flood plain of any stream, as shown in Zone A of the Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any state highway bridge, the Planning Division of the Land Use Services Department shall also notify the State Department of Transportation that the application has been received.

(f) The Planning Division of the Land Use Services Department shall process the application(s) through environmental review pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) and the County's environmental review guidelines.

(g) Subsequent to the appropriate environmental review, the Planning Division of the Land Use Services Department shall prepare a staff report with recommendations for consideration by the Planning Commission.

(h) The Planning Commission shall hold at least one noticed public hearing on the Conditional Use Permit and/or Reclamation Plan.

(i) Prior to final approval of a Reclamation Plan, financial assurances (as provided in this Chapter), or any amendments to the Reclamation Plan or existing financial assurances, the Director of Land Use Services shall certify to the State Department of Conservation that the Reclamation Plan and/or financial assurance complies with the applicable requirements of State law, and submit the plan, assurance, or amendments to the State Department of Conservation for review. If a Conditional Use Permit is being processed concurrently with the Reclamation Plan and it becomes necessary to comply with permit processing deadlines, the Planning Commission may conditionally approve the Conditional Use Permit with the condition that the Planning Division of the Land Use Services Department shall not issue the Conditional Use Permit for the mining operations until cost estimates for financial assurances have been reviewed by the State Department of Conservation and final action has been taken on the Reclamation Plan and financial assurances.

Pursuant to PRC §2774(d), the State Department of Conservation (DOC) shall be given 30 days to review and comment on the Reclamation Plan and 45 days to review and comment on the financial assurance. The Planning Commission shall evaluate written comments received, if any, from the DOC during the comment periods. Staff shall prepare a written response describing the disposition of the major issues raised by the State for the Planning Commission's approval. In particular, when the Planning Commission's position is at variance with the recommendations and objections raised in the State's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. The Planning Commission staff report including the staff prepared responses to the DOC, along with the minutes of the hearing shall constitute the written response to the state.

(j) The Planning Commission shall then take action to approve, conditionally approve, or deny the Conditional Use Permit and/or Reclamation Plan, and to approve the financial assurances pursuant to PRC §2770(d).

(k) The Planning Division of the Land Use Services Department shall forward a copy of each approved Conditional Use Permit for mining operations and/or approved Reclamation Plan, and a copy of the approved financial assurances to the State Department of Conservation within 30 days of approval.

810.0125 Standards for Reclamation.

(a) All Reclamation Plans shall comply with the provisions of SMARA (PRC §§2772-2773) and State regulations (CCR §§3500-3505). Reclamation Plans approved after January 15, 1993, Reclamation Plans for proposed new mining operations, and any substantial amendments to previously approved Reclamation Plans, shall also comply with the requirements for reclamation performance standards (CCR §§3700-3713).

(b) The County may impose additional performance standards as developed either in review of individual projects, as warranted, or through the formulation and adoption of countywide performance standards.

(c) Reclamation activities shall be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance. Interim reclamation may also be required for mined lands that have been disturbed and that may be disturbed again in future operations. Reclamation may be done on an annual basis, in stages compatible with continuing operations, or on completion of all excavation, removal, or fill, as approved by the County. Each phase of reclamation shall be specifically described in the Reclamation Plan and shall include (a) the beginning and expected ending dates for each phase; (b) all reclamation activities required; (c) criteria for measuring completion of specific reclamation activities; and (d) estimated costs for completion of each phase of reclamation.

Readopted Ordinance 3341 (1989); Amended Ordinance 3759 (1999)

810.0130 Statement of Responsibility.

The property owner or mining operator shall sign a statement accepting responsibility for reclaiming the mined lands in accordance with the Reclamation Plan. Said statement shall be retained by the Planning Division of the Land Use Services Department in the mining operation's permanent record. Upon sale or transfer of the operation, the new operator shall submit a signed statement of responsibility to the Planning Division of the Land Use Services Department for placement in the permanent record, prior to beginning mining operations. This shall be completed by the filing and processing of the Transfer of Ownership application.

Readopted Ordinance 3341 (1989); Amended Ordinance 3759 (1999)

810.0135 Findings for Approval.

(a) Conditional Use Permits. In addition to any findings required by the County Code, Conditional Use Permits for surface mining operations shall include a finding that the project complies with the provisions of SMARA and State regulations.

(b) Reclamation Plans. In order to approve Reclamation Plans, the following findings shall be made in the affirmative:

(1) That the Reclamation Plan complies with SMARA (PRC §§2772-2773), and any other applicable provisions;

(2) That the Reclamation Plan complies with applicable requirements of State regulations (CCR §§3500-3505, and §§3700-3713).

(3) That the Reclamation Plan and potential use of reclaimed land pursuant to the plan are consistent With this Chapter and the County's General Plan and any applicable resource plan or element.

(4) That the Reclamation Plan has been reviewed pursuant to CEQA and the County's environmental review guidelines, and all significant adverse impacts from reclamation of the surface mining operations are mitigated below a level of significance or to the maximum extent feasible.

(5) That the land and/or resources such as water will be reclaimed to a condition that is compatible with, and blends in with, the surrounding natural environment, topography, and other resources, or that suitable off-site development will compensate for related disturbance to resource values.

(6) That the Reclamation Plan will reclaim the mined lands to a usable condition which is readily adaptable for alternative land uses consistent with the General Plan and applicable resource plan.

(7) That a written response to the State Department of Conservation has been prepared, describing the disposition of major issues raised by that Department. Where the County's position is at variance with the recommendations and objections raised by the State Department of Conservation, said response shall address, in detail, why specific comments and suggestions were not accepted.

Readopted Ordinance 3341 (1989); Amended Ordinance 3759 (1999)

810.0140 Financial Assurances.

(a) To ensure that reclamation will proceed in accordance with the approved Reclamation Plan, the County shall require as a condition of approval security which will be released upon satisfactory performance. The applicant may pose security in the form of a surety bond, trust fund, irrevocable letter of credit from an accredited financial institution, or other method acceptable to the County and the State Mining and Geology Board as specified in State regulations, and which the County reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved Reclamation Plan. Financial assurances shall be made payable to the

County and the State Department of Conservation. In the case where the approved Reclamation Plan involves unpatented land under the control of the Bureau of Land Management (BLM), National Park Service or U. S. Forest Service, the appropriate agency shall also be added as a third payee.

(b) Financial assurances will be required to ensure compliance with elements of the Reclamation Plan, including but not limited to, revegetation and landscaping requirements, reclamation of aquatic or wildlife habitat, reclamation of water bodies and water quality, slope stability and erosion and drainage control, disposal of hazardous materials, removal of equipment and buildings which are not part of an approved end use, and other measures, if necessary.

(c) Cost estimates for the financial assurance shall be submitted to the Planning Division of the Land Use Services Department for review and approval prior to the operator securing financial assurances. The Director of Land Use Services shall forward a copy of the cost estimates, together with any documentation received supporting the amount of the cost estimates, to the State Department of Conservation for review. If the State Department of Conservation does not comment within 45 days of receipt of these estimates, it shall be assumed that the cost estimates are adequate, unless the County has reason to determine that additional costs may be incurred. The Director of Land Use Services shall have the discretion to approve the financial assurance if it meets the requirements of this Chapter, SMARA, and State regulations.

(d) The amount of the financial assurance shall be based upon the estimated costs of reclamation stipulated in the approved Reclamation Plan, including any maintenance of reclaimed areas as may be required, subject to adjustment for the actual amount required to reclaim lands disturbed by surface mining activities since January 1, 1976, and new lands to be disturbed by surface mining activities in the upcoming year. Cost estimates should be prepared by the mine operator, a licensed engineer or other professional experienced in the reclamation of mined lands. The estimated amount of the financial assurance shall be based on an analysis of physical activities necessary to implement the approved Reclamation Plan, the unit costs for each of these activities, the number of units of each of these activities, and the actual administrative costs. Financial assurances to ensure compliance with revegetation, reclamation of water bodies, reclamation of aquatic or wildlife habitat, and any other applicable element of the approved Reclamation Plan shall be based upon cost estimates that include but may not be limited to labor, equipment, materials, mobilization of equipment, administration, and reasonable profit by a commercial operator other than the permitter. A contingency factor of ten percent (10%) shall be added to the cost of financial assurances to cover the County's reasonable expenses for the administrative and legal fees required to foreclose on the financial assurance instrument.

(e) In projecting the costs of financial assurances, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator and, consequently, the County or State Department of Conservation may need to contract with a third party commercial company for reclamation of the site.

(f) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period specified in the Reclamation Plan for the purpose of monitoring until reclamation is completed (including any maintenance required).

(g) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and giving credit for reclamation of lands accomplished in accordance with the approved Reclamation Plan. The financial assurances shall include estimates to cover reclamation for existing conditions and anticipated activities during the upcoming year, excepting that the permittee may not claim credit for reclamation scheduled for completion during the coming year. The annual SMARA inspection by the County shall, in most cases, be used to validate the submitted estimate.

(h) Revisions to financial assurances shall be submitted to the Director of Land Use Services each year prior to the anniversary date for approval of the financial assurances. The financial assurance shall cover the cost of existing disturbance and anticipated activities for the next calendar year, including any required interim reclamation. If revisions to the financial assurances are not required, the operator shall explain, in writing, why revisions are not required.

Adopted Ordinance 3759 (1999)

810.0145 Interim Management Plans.

(a) Within 90 days of a surface mining operation becoming idle, the operator shall submit to the Planning Division of the Land Use Services Department a proposed Interim Management Plan (IMP). The proposed IMP shall fully comply with the requirements of SMARA, including but not limited to all Conditional Use Permit conditions, and shall provide measures the operator will implement to maintain the site in a stable condition, taking into consideration public health and safety. The proposed IMP shall be submitted on forms provided by the Planning Division of the Land Use Services Department, and shall be processed as an amendment to the Reclamation Plan. IMPs shall not be considered a project for the purposes of environmental review.

(b) Financial assurances for idle operations shall be maintained as though the operation were active, or as otherwise approved through the idle mine's IMP.

(c) Upon receipt of a complete proposed IMP, the Planning Division of the Land Use Services Department shall forward the IMP to the State Department of Conservation for review. The IMP shall be submitted to the State Department of Conservation at least 30 days prior to approval by the Director of Land Use Services.

(d) Within 60 days of receipt of the proposed IMP, or a longer period mutually agreed upon by the Director of Land Use Services and the operator, the Director of Land Use Services shall review and approve or deny the IMP in accordance with this Chapter. The operator shall have thirty (30) days, or a longer period mutually agreed upon by the operator and the Director of Land Use Services, to submit a revised IMP. The Director of Land Use Services shall approve or deny the revised IMP within sixty (60) days of receipt. If the Director of Land Use Services denies the revised IMP, the operator may appeal that action to the Planning Commission.

(e) The IMP may remain in effect for a period not to exceed five years, at which time the Director of Land Use Services may renew the IMP for another period not to exceed five years, or require the surface mining operator to commence reclamation in accordance with its approved Reclamation Plan.

Adopted Ordinance 3759 (1999)

810.0150 Annual Report Requirements.

Surface mining operators shall forward an annual surface mining report to the State Department of Conservation and to the County Planning Division of the Land Use Services Department on a date established by the State Department of Conservation, upon forms furnished by the State Mining and Geology Board. New mining operations shall file an initial surface mining report and any applicable filing fees with the State Department of Conservation within 30 days of initial permit approval, or before commencement of operations, whichever is sooner. Any applicable fees, together with a copy of the annual inspection report, shall be forwarded to the State Department of Conservation at the time of filing the annual surface mining report.

Adopted Ordinance 3759 (1999)

810.0155 Inspections.

(a) The Planning Division of the Land Use Services Department shall arrange for inspection of a surface mining operation within six months of receipt of the Annual Report required in Section 810.0150, to determine whether the surface mining operation is in compliance with the approved Conditional Use Permit and/or Reclamation Plan, approved financial assurances, and State regulations. In no event shall less than one inspection be conducted in any calendar year. Said inspections may be made by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, or state-registered forester, who is experienced in land reclamation and who has not been employed by the mining operation in any capacity during the previous 12 months, or other qualified specialists, as selected by the Director of Land Use Services. All inspections shall be conducted using a form approved and provided by the State Mining and Geology Board.

(b) The Planning Division of the Land Use Services Department shall notify the State Department of Conservation within thirty (30) days of completion of the inspection that said inspection has been conducted, and shall forward a copy of said inspection notice and any supporting documentation to the mining operator. The operator shall be solely responsible for the reasonable cost of such inspection.

Adopted Ordinance 3759 (1999)

810.0160 Violations and Penalties.

If the Director of Land Use Services, based upon an annual inspection or otherwise confirmed by an inspection of the mining operation, determines that a surface mining operation is not in compliance with this Chapter, the applicable Conditional Use Permit and/or the Reclamation Plan, the County shall follow the procedures set forth in Public Resources Code, Sections 2774.1 and 2774.2 concerning violations and penalties, as well as those provisions of Chapter 2 of Division 1 of the County Development Code for initiating enforcement action which could include the revocation of a Conditional Use Permit.

Adopted Ordinance 3759 (1999)

810.0165 Appeals.

Any person aggrieved by an act or determination of the Planning Officer in the exercise of the authority granted herein, shall have the right to appeal to the Planning Commission. Any person aggrieved by an act or determination of the Planning Commission in the exercise of the authority granted herein, shall have the right to appeal to the Board of Supervisors. An appeal shall be filed in writing on forms provided, within ten (10) calendar days of the decision, except that if the tenth calendar day following the decision is not a County business day, the appeal may be filed on the next following County business day.

Adopted Ordinance 3759 (1999)

810.0170 Fees.

The County shall establish such processing fees as it deems necessary to cover the reasonable costs incurred in implementing this Chapter and the State regulations, including but not limited to, processing of applications, annual reports, inspections, monitoring, enforcement and compliance. Such fees shall be paid by the operator, as required by the County, at the time of filing of the Conditional Use Permit application, Reclamation Plan application, and at such other times as are determined by the County to be appropriate in order to ensure that all reasonable costs of implementing this Chapter are borne by the mining operator.

Adopted Ordinance 3759 (1999)

810.0175 Mineral Resource Protection.

(a) Mine development is encouraged in compatible areas before encroachment of conflicting uses. Mineral resource areas that have been classified by the State Department of Conservation's Division of Mines and Geology or designated by the State Mining and Geology Board as Mineral Resource Zones (MRZs), as well as existing surface mining operations that remain in compliance with the provisions of this Chapter, shall be protected from intrusion by incompatible land uses that may impede or preclude mineral extraction or processing, to the extent possible for consistency with the County's General Plan.

(b) In accordance with PRC §2762, the County's General Plan and resource maps will be updated to reflect mineral information (classification and/or designation reports) within 12 months of receipt from the State Mining and Geology Board of such information. Land use decisions within the County will be guided by information provided on the location of identified mineral resources of regional significance. Conservation and potential development of identified mineral resource areas will be considered and encouraged. Recordation on property titles of the presence of important mineral resources within the identified mineral resource areas may be encouraged as a condition of approval of any development project in the impacted area. Prior to approving a use that would otherwise be incompatible with mineral resource protection, conditions of approval may be applied to encroaching development projects to minimize potential conflicts.

Adopted Ordinance 3759 (1999)

810.0180 Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this Chapter.

Adopted Ordinance 3759 (1999)